

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
SAN CARLOS APACHE TRIBE

THIS AGREEMENT is entered into 24 September, 2001 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the SAN CARLOS APACHE TRIBE acting by and through its TRIBAL COUNCIL (the "Tribe").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Tribe is empowered by Council Resolution to enter into this agreement, a copy of which is attached hereto and made a part hereof, and has resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Tribe.

3. The State and the Tribe desire to remove two existing cattleguards on US-70 at MP 258.6, and MP 258.75, and to install a new cattleguard on US-70 at the intersection of IR-6 (MP 259.25), at a currently estimated cost of \$50,000.00, all at State expense, hereinafter referred to as the Project. The parties agree the Project will be funded by the State for \$25,000.00 during State FY02 (H5931 01C) and \$25,000.00 during State FY03 (H5931 02C), and that the Tribe shall be the lead agency for the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO 24904
Filed with the Secretary of State
Date Filed: 09/24/01
Bethany Bayless
Secretary of State
B Vickey J. Praemewald

II. SCOPE OF WORK

1. The Tribe will:

a. As necessary as then determined by the Tribe and the State, provide design plans, specifications and such other documents and services required for construction of the Project. Incorporate or resolve State review comments.

a. Construct the Project with Tribal employees, or, if required, call for bids, and with the concurrence of the State, award one or more construction contracts for the Project. Administer same and make all payments to the contractor(s). Confer with the State on any Project construction contract modifications.

b. During State FY02, invoice the State for \$25,000.00 and during State FY03, invoice the State for \$25,000.00 as the cost of the Project. Be responsible for all costs of the Project over and above the States contribution of \$50,000.00

c. Upon completion, approve and accept the Project on behalf of the parties hereto and provide maintenance outside the State right-of-way.

2. The State will:

a. Review the design documents and provide comments.

b. Within 30 days after receipt and approval of invoices, pay the Tribe for the cost of the Project, in an amount not to exceed \$25,000.00 for fiscal year 2002 and \$25,000.00 for fiscal year 2003.

c. Upon completion and acceptance by the Tribe, provide maintenance to the Project inside the State right-of-way.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall become effective upon filing with the Secretary of State, and shall remain in force and effect until completion of said Project and payments; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be canceled at any time prior to the commencement of performance of this agreement, upon thirty (30) days written notice to the other party.

2. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

3. This agreement shall become effective upon filing with the Secretary of State.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. Applicable laws and regulations of the State, the Tribe and the Federal government shall govern the rights of the parties with respect to the performance of this agreement. In the event of any controversy which may arise out of this agreement, the parties hereto agree to select a process acceptable to the State, the Tribe and the BIA to resolve such disputes. Such process shall include a provision for arbitration.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drec 616E
Phoenix, AZ 85007

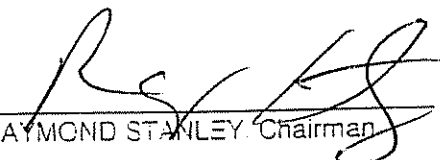
San Carlos Apache Tribe
Chairman
PO Box 209
San Carlos, AZ 85580

7. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under their respective laws to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

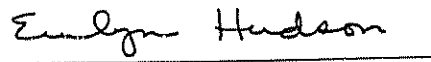
SAN CARLOS APACHE TRIBE

STATE OF ARIZONA
Department of Transportation

By 
RAYMOND STANLEY, Chairman

By 
WILLIAM J. HIGGINS
Deputy State Engineer

ATTEST:

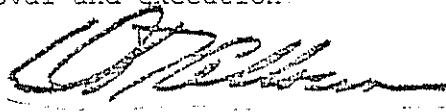
By 
EVELYN HUDSON
Tribal Secretary

01-60coc

RESOLUTION

BE IT RESOLVED on this 22nd day of April 2001, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona, that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the San Carlos Apache Tribe for the purpose of constructing improvements to US-70.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer approval and execution.

A handwritten signature in dark ink, appearing to read 'D. Allocco', written over a horizontal line.

DAVID R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group
for Mary E. Peters, Director

SAN CARLOS APACHE TRIBE
SAN CARLOS APACHE INDIAN RESERVATION
SAN CARLOS, ARIZONA

RESOLUTION

No. AUG-01-152

WHEREAS, the San Carlos Apache Tribe is a Federally reorganized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, a continuing improvement in the Custer area within the Arizona Department of Right of Way is necessary to upgrade the condition of the road; and

WHEREAS, the proposed construction will include the Arizona Department of Transportation Right of Way Fencing with the Chain Link Fencing and installing the new Cattle Guard on the turn off to the Saw Mill, Truck Shop and to Route 6 Intersection; and

WHEREAS, Arizona Department of Transportation and the San Carlos Apache tribe require and Intergovernmental Agreement as attached before they would start implementing the project.

NOW THEREFORE BE IT RESOLVED:


The San Carlos Apache Tribal Council approves the attached Intergovernmental Agreement.

BE IT FURTHER RESOLVED THAT:

The Tribal Chairman or his designee is hereby authorized to sign the Intergovernmental Agreement and to carry out necessary tasks to implement this project.

CERTIFICATION

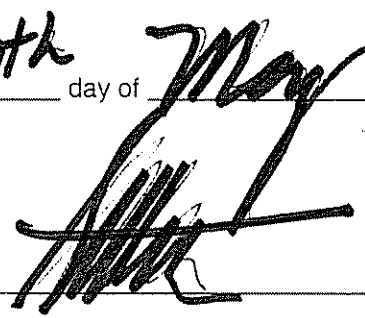
I, the undersigned Secretary of the San Carlos Apache Tribal Council hereby certify that the San Carlos Apache Tribal Council is presently composed of eleven (11) members of whom eleven (11). Constituting of quorum, were present at a Regular Council meeting hereto held on the 7th day of August 2001. The foregoing resolution Number AUG-01-152 was duly adopted by a vote of 10 FOR; 1 OPPOSED; 0 ABSTAINED. Pursuant to the provisions of Article V, Section 1 (a), Amended Constitution and Bylaws of the San Carlos Apache Tribe effected February 24, 1954.


Evelyn Hudson, Tribal Secretary
San Carlos Apache Tribal Council

APPROVAL OF THE SAN CARLOS APACHE TRIBE ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and SAN CARLOS APACHE TRIBE and declare this agreement to be in proper form and within the powers and authority granted to the Tribe under the laws of the State of Arizona.

DATED this 17th day of May 2001



Tribe Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ 85007-2926

JANET NAPOLITANO
ATTORNEY GENERAL

TRN Main: (602) 542-1680

Direct: (602) 542-8855

Fax: (602) 542-3646

MAIN PHONE : (602) 542-5025

FACSIMILE : (602) 542-4085


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR01-0632TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED September 17, 2001.

JANET NAPOLITANO
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section

JTM:ggt

Enc.

703985